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**UNITED STATES DISTRICT COURT**  
**CENTRAL DISTRICT OF CALIFORNIA**

MICHELLE ALBAHAE, et al.,

Plaintiffs,

v.

OLAPLEX HOLDINGS, INC. and  
COSWAY CO., INC.,

Defendants.

Case No. 2:23-cv-00982-RGK-PLA

**OLAPLEX HOLDINGS, INC.'S  
BRIEF IN RESPONSE TO ORDER  
TO SHOW CAUSE RE MOTION TO  
SEVER AND DISMISS**

Hearing Date: N/A

Hearing Time: N/A

Action Filed: February 9, 2023

Judge: Hon. R. Gary Klausner

Courtroom: 850

1 On June 15, 2023, the Court issued an Order on the Motion to Sever (“MTS”)  
 2 filed by Olaplex Holdings, Inc. (“Olaplex”), MTS, ECF No. 72, in which it held that  
 3 Plaintiffs’ claims do not arise out of the same transaction or occurrence, and that  
 4 severance and dismissal is proper. MTS Order, ECF No. 93 at 3. In that Order, the  
 5 Court asked Olaplex and Plaintiffs to show cause as to why the Court should or  
 6 should not sever and dismiss the claims of all misjoined Plaintiffs (as opposed to  
 7 only the non-California Plaintiffs). *Id.* at 4.

8 Olaplex agrees with the Court that severance and dismissal of *all* misjoined  
 9 Plaintiffs and claims is proper. For the following reasons, Olaplex asserts that the  
 10 most appropriate remedy in these circumstances is for the Court to (1) sever the  
 11 claims of all Plaintiffs, and (2) dismiss the claims of all but Plaintiff Michelle  
 12 Estrada (the first-named California Plaintiff allegedly domiciled within the Central  
 13 District), without prejudice to the other Plaintiffs’ rights to file individually in their  
 14 home jurisdictions.<sup>1</sup>

15 **First**, Rule 21 of the Federal Rules of Civil Procedure contemplates  
 16 “flexibility in curing misjoinder,” *Helm v. Alderwoods Grp. Inc.*, 2011 WL  
 17 2837411, at \*2 (N.D. Cal. July 18, 2011), and the Court has “considerable  
 18 discretion” in selecting the proper remedy. *Bravado Int’l Grp. Merch. Servs. v. Cha*,  
 19 2010 WL 2650432, at \*5 (C.D. Cal. June 30, 2010). One common solution is to  
 20 “dismiss all but the first named plaintiff without prejudice to the institution of new,  
 21 separate lawsuits by the dropped plaintiffs[.]” *Grijalva v. Kevin Mason, P.A.*, 2019  
 22 WL 13027072, at \*1 (C.D. Cal. Dec. 30, 2019) (quoting *Coughlin v. Rogers*, 130  
 23 F.3d 1348, 1350 (9th Cir. 1997)). However, Rule 21 provides more broadly that the  
 24 Court may drop any “party” that is misjoined. Fed. R. Civ. P. 21. Depending on the  
 25 circumstances, this may include dismissal of the “first-named” plaintiff. *See Milton*

26 <sup>1</sup> Even though the claims of all of the Plaintiffs are misjoined, Olaplex recognizes  
 27 the efficiencies and avoidance of duplication of labor that might be achieved by  
 28 coordinating discovery among the individual cases to the extent they are re-filed,  
 particularly those that are properly re-filed in this District.

1 *v. California*, 2022 WL 17978802, at \*10 (N.D. Cal. Dec. 28, 2022) (dismissing  
 2 misjoined plaintiffs, including the first-named plaintiff); *see also Jaffe v. LSI Corp.*,  
 3 2012 WL 12921304 (N.D. Cal. Dec. 19, 2012) (dismissing misjoined defendants,  
 4 including the first-named defendant).

5 ***Second***, because Plaintiffs in this matter are listed alphabetically by last name  
 6 in the case caption, the first-named Plaintiff is Michelle Albahae. According to the  
 7 operative complaint, Plaintiff Albahae is “a citizen of Florida, residing in Tamarac,  
 8 Florida,” First Am. Compl. (“FAC”) ¶ 7, and her claims should be dismissed along  
 9 with the other non-California Plaintiffs, without prejudice to refiling their claims  
 10 individually in their home jurisdictions.<sup>2</sup> *Dunbar v. Medtronic, Inc.*, 2014 WL  
 11 3056081, at \*3 (C.D. Cal., June 25, 2014) (J. Klausner) (dismissing claims of non-  
 12 California plaintiffs without prejudice to refile in the proper venue); *Mowell v.*  
 13 *Bayer Healthcare Pharms., Inc.*, 2014 WL 12930945, at \*2 (C.D. Cal. July 11,  
 14 2014) (severing claims and dismissing plaintiffs to refile “in the appropriate  
 15 venues”); *Acfalle v. Directtv, Inc.*, 2014 WL 12738214, at \*6 (C.D. Cal., July 22,  
 16 2014) (dismissing non-California plaintiffs without prejudice to re-filing “in their  
 17 home states or in neighboring states.”). Instead, the Plaintiff who should remain in  
 18 this case is the first-named *California* Plaintiff domiciled within the Central  
 19 District—the first-named Plaintiff whose claims are appropriately before this  
 20 Court—Michelle Estrada. FAC ¶ 33 (“a citizen of California, residing in Fontana,  
 21 California”); *Mowell*, 2014 WL 12930945, at \*2 (dismissing all plaintiffs, including  
 22 the first-named plaintiff, except for the first plaintiff “who is a citizen of California  
 23 and domiciled within the Central District”).

24 Accordingly, and for the reasons stated above, Olaplex respectfully submits  
 25 that the Court should sever all Plaintiffs’ claims and dismiss all but the first-named  
 26 California plaintiff domiciled in the Central District, Michelle Estrada, without

27 <sup>2</sup> In the event the Court finds it is not appropriate to dismiss Ms. Albahae’s claims,  
 28 Olaplex anticipates moving to transfer her claims to the Southern District of Florida.

1 prejudice to refiling their individual cases in the proper jurisdictions.

2 Dated: June 26, 2023

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3  
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10 Attorneys for Defendant  
11 OLAPLEX Holdings, Inc.

12 **CERTIFICATE OF COMPLIANCE**

13 The undersigned, counsel of record for Olaplex Holdings, Inc., certifies that  
14 this brief contains 701 words and 3 pages, which complies with the word limit of  
15 L.R. 11-6.1 and the page limits set by the Honorable R. Gary Klausner's Standing  
16 Order and Order to Show Cause, ECF No. 93.

17  
18 Dated: June 26, 2023

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